

JOHN WESLEY WILLIAMS,)	No. C 12-03606 EJD (PR)
Petitioner,)	ORDER TO SHOW CAUSE
vs.)	
)	
SCOTT McEWAN, Warden,)	
Respondent.)	

Petitioner, a California prisoner, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the forfeiture of good time credits while incarcerated at the Richard J. Donovan Correctional Facility in San Diego.¹ Petitioner has paid the filing.

A. Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a

¹This matter was transferred to this Court from the Southern District of California on July 16, 2012, as Petitioner was confined at Salinas Valley State Prison at the time he filed the petition. If the petition is directed to the manner in which a sentence is being executed, e.g., if it involves parole or time credits claims, the district of confinement is the preferable forum. See Habeas L.R. 2254-3(b)(2); Dunne v. Henman, 875 F.2d 244, 249 (9th Cir. 1989).

1 person in custody pursuant to the judgment of a State court only on the ground that he is
 2 in custody in violation of the Constitution or laws or treaties of the United States.” 28
 3 U.S.C. § 2254(a).

4 It shall “award the writ or issue an order directing the respondent to show cause
 5 why the writ should not be granted, unless it appears from the application that the
 6 applicant or person detained is not entitled thereto.” Id. § 2243.

7 B. Legal Claims

8 Petitioner alleges that his right to due process was violated when he was found
 9 guilty of a Rules Violation Report for “masturbation with exposure.” (Pet. at 3.)
 10 Petitioner was assessed 90 days credit forfeiture. Petitioner also claims that he suffered
 11 disciplinary sanctions which amounted to cruel and unusual punishment and violated his
 12 right against double jeopardy. Liberally construed, Petitioner’s due process and Eighth
 13 Amendment claims appear colorable under § 2254.

14 Petitioner’s double jeopardy claim is DISMISSED for failure to state a claim.²
 15 The Double Jeopardy Clause’s protection against multiple punishment is rarely
 16 implicated in prison disciplinary matters because: (1) even if prison disciplinary
 17 sanctions are “punishment,” they are generally not distinct from the punishment for the
 18 conviction for which petitioner is in custody; and (2) the sanctions are not punishment
 19 for purposes of double jeopardy because they are also generally solely remedial. See
 20 United States v. Brown, 59 F.3d 102, 104-05 (9th Cir. 1995).

21 ///

22 ///

23 ///

24
 25 ² Furthermore, the Double Jeopardy Clause does not preclude criminal
 26 prosecution for conduct for which prison authorities have already imposed
 27 administrative discipline. See Brown, 59 F.3d at 103-04; Garrity v. Fiedler, 41 F.3d
 28 1150, 1152 (7th Cir. 1994), cert. denied, 514 U.S. 1044 (1995); United States v.
Newby, 11 F.3d 1143, 1144 (3d Cir. 1993), cert. denied, 511 U.S. 1087 (1994), and
cert. denied, 511 U.S. 834 (1994). The Clause’s protection against successive
 criminal trials is not implicated because a prison disciplinary proceeding is not a
 criminal trial. See Newby, 11 F.3d at 1145.

CONCLUSION

For the foregoing reasons,

1 The Clerk shall serve by certified mail a copy of this order and the
petition, and all attachments thereto, on Respondent and Respondent's attorney, the
Attorney General of the State of California. The Clerk also shall serve a copy of this
order on Petitioner.

2. Respondent shall file with the court and serve on petitioner, within **sixty (60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on Respondent within **thirty (30) days** of his receipt of the answer.

3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an opposition or statement of non-opposition within **thirty (30) days** of receipt of the motion, and Respondent shall file with the court and serve on Petitioner a reply within **fifteen (15) days** of receipt of any opposition.

4. Petitioner is reminded that all communications with the court must be served on Respondent by mailing a true copy of the document to Respondent's counsel. Petitioner must keep the court and all parties informed of any change of address by filing a separate paper captioned "Notice of Change of Address." He must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

1 5. Petitioner has recently filed a notice of address change, stating that he has
2 been transferred to the California State Prison - Los Angeles. (Docket No. 6.) The
3 Clerk shall therefore replace Warden Anthony Hedgpeth with Warden Scott McEwan as
4 Respondent in this action.

5
6 DATED: 10/5/2012


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOHN WESLEY WILLIAMS,
Petitioner,

Case Number: CV12-03606 EJD

CERTIFICATE OF SERVICE

v.

SCOTT McEWAN, Warden,
Respondent.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 10/9/2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

John Wesley Williams V-34055
California State Prison-Los Angeles
Inmate Mail/Parcels
P.O. BOX 4670
Lancaster, CA 93539

Dated: 10/9/2012

Richard W. Wieking, Clerk
/s/By: Elizabeth Garcia, Deputy Clerk